

LAW, JUSTICE, AND ETHICS

Resolution LJE-13-39

URGING FAIR AND EQUITABLE DISTRIBUTION OF INHERITED PROPERTY

WHEREAS, the National Black Caucus of State Legislators (NBCSL) supports real estate ownership as a means of wealth creation;

WHEREAS, property ownership is an important factor in transmitting generational wealth;

WHEREAS, African Americans owned at least 16 million acres of agricultural land in the United States in 1910, yet only retain ownership of 3,826,403 acres of that land out of a total of 922,095,840 as of 2007;

WHEREAS, state property laws mandate that property inherited by multiple persons be held as a tenancy-in-common, an inherently unstable form of ownership subject to partition at the request of any one co-tenant;

WHEREAS, partition sales are a leading cause of African-American land loss;

WHEREAS, the Uniform Partition of Heirs Property Act (UPHPA) drafted by the Uniform Law Commission was approved by that body in 2010 and recommended for enactment by the states;

WHEREAS, the UPHPA is also supported by the Council of State Governments, the American College of Real Estate Lawyers, and the American Bar Association, and Georgia and Nevada have both enacted UPHPA; and

WHEREAS, the UPHPA helps to prevent the forced sale of inherited property by ensuring due process while preserving the right of a co-tenant to sell real property for its fair market value.

THEREFORE BE IT RESOLVED, that the National Black Caucus of State Legislators (NBCSL) encourages state legislatures to provide the owners of inherited property the necessary protections from a forced partition and consequent loss of family wealth;

BE IT FURTHER RESOLVED, that the NBCSL urges states to examine legislation with the following components:

- ▶ The co-tenant requesting the partition must give notice to all of the other co-tenants;
- ▶ The court must order an appraisal to determine the property's fair market value, and if any co-tenant objects to the appraised value, the court must hold a hearing to consider other evidence;
- ▶ Any co-tenant (except the co-tenant who requests partition) may purchase the interest of the selling co-tenant at the court-determined fair market value with ample time to evaluate the offer and obtain financing;
- ▶ Allows more than one co-tenant to elect to purchase the selling co-tenant's share with the court able to pro-rate the seller's share;
- ▶ If no co-tenant elects to purchase the selling co-tenant's share, the court must order a partition-in-kind, unless the court determines that partition-in-kind will result in great prejudice to the co-tenants as a group; and
- ▶ If partition-in-kind is inappropriate and the court orders a partition-by-sale, the property must be offered for sale on the open market at a price no lower than the court-determined value for a reasonable period of time and in a commercially reasonable manner, and if an open market sale is unsuccessful or the court determines that a sale by sealed bids or by auction would be more economically advantageous for the co-tenants as a group, the court may order a sale by one of those methods;

BE IT FURTHER RESOLVED, that the NBCSL further urges legislators to educate their constituents about planning in order to prevent or mitigate probate challenges; and

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BE IT FINALLY RESOLVED, that a copy of this resolution be transmitted to the President of the United States, the Vice President of the United States, members of the United States House of Representatives and the United States Senate, and other federal and state government officials as appropriate.

SPONSOR(S): Representative Ken Dunkin (IL) and Representative Charlie Brown (IN)

Committee of Jurisdiction: Law, Justice, and Ethics Policy Committee

Certified by Committee Chair: Representative Gilda Cobb-Hunter (SC)

Ratified in Plenary Session: Ratification Date is December 7, 2012

Ratification is certified by: Representative Barbara W. Ballard (KS), President